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5 United States of America
6 Eastern District of Washington
(Honorable Judge Thomas O. Rice)

7
8 United States of America,
9 Plaintiff,
10 v.
11 Bradley Dale Hull,
12 Defendant(s).

No. 2:20-CR-00128-TOR-2

Sentencing Memorandum and Motion
for Downward Departures or Variances

13 Bradley Dale Hull, through counsel, Zachary L. Ayers of Ayers Law Firm,
14 P.L.L.C. and Stephen R. Hormel of Hormel Law Office, LLC, respectfully submit this
15 sentencing memorandum and motion for downward variance.
16

17 A. **Guideline Calculations.**

18 “The overarching statutory charge for a district court is to ‘impose a sentence
19 sufficient, but not greater than necessary’” to achieve the purposes of sentencing
20 delineated in § 3553(a). *United States v. Carty*, 520 F.2d 984, 991 (9th Cir. 2008). No
21 single factor is dispositive, and the range calculated from the United States Sentencing
22 Guidelines is only “the ‘starting point and the initial benchmark.’” *Carty*, 520 F.2d at
23 991 (quoting *Kimbrough v. United States*, 552 U.S.38, 49 (2007) (quoting *Gall v. United*
24 *States*, 552 U.S. 85, 108 (2007) (quotations in original)).
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1 The Guidelines are not presumed reasonable and are not given any greater
2 weight than any other factor in § 3553(a). *Carty*, 520 F.3d at 991.

3
4 Hull maintains that the base offense level is 30. Relevant conduct is limited to
5 Counts 5 and 6, the activities involving Misty Haynes on February 7, 2020. (ECF Nos.
6 300 at 2-7 and 303 at 1-6).

7
8 Hull further maintains that the two-level increase for obstruction of justice
9 based on perjury does not apply. Hull maintains that the common law, and federal law
10 requirement that at least two positive and direct witnesses are required to prove false
11 testimony, or one such witness and positive and direct other corroborating evidence
12 must prove the false testimony. (ECF Nos. 300 at 7-13 and 303 at 6). The evidence
13 relies strictly on Detective Melton's testimony and is an insufficient quantum of proof
14 to prove, even by a preponderance of evidence, perjury.
15

16
17 Hull also maintains that a mitigating role adjustment is justified. (ECF Nos. 300
18 at 13-14 and 303 at 6-7).

19
20 Hull finally maintains that his conviction for negligent driving in the first degree
21 in Washington state is not "similar" to a DUI and should not be included in the
22 criminal history calculation. (ECF Nos. 300 at 14-15 and 303 at 7-10).

23
24 The total offense level is at most a 30 and as low as 26. The criminal history
25 category is II. The guideline range is at most 108 to 135 months in prison, and as low
26 as 70 to 87 months in prison. It is requested that the court impose no more than the
27 10-year mandatory minimum term in prison.
28

1 B. 18 U.S.C. §3553(a)

2 18 U.S.C. §3553(a) sets out factors that are helpful to the Court when
3
4 determining a sentence that is “sufficient but not greater than necessary” to comply
5 with the purposes of the statute. The District Court may not presume that the
6 guideline range is reasonable, nor should the guideline factors be given any more or
7 less weight than any other. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) *en*
8 *banc*, citing *Rita v. United States*, 127 S.Ct. 2456 (2007), *Gall v. United States*, 127 S.Ct.
9 2833 (2007), and *Kimbrough v. United States*, 128 S.Ct. 558 (2007). The guidelines are
10 only one factor to be taken into account in arriving at an appropriate sentence. *Id.*
11
12

13 **Nature of the Offense and History and Characteristics of the Defendant**

14 The offense Mr. Hull was convicted of is serious. It is methamphetamine and
15 heroin distribution led by his then girlfriend, Misty Haynes. At the time of the offense,
16 Mr. Hull was attempting stop his addiction to controlled substances. He was
17 unfortunately unsuccessful with the influence of Ms. Haynes around. Mr. Hull was
18 deeply in love with her.
19
20

21 Mr. Hull has a deep-loving relationship with his mother, Lillie Hull. (PSIR ¶
22 132). Mr. Hull never knew his biological parents. Ms. Hull and her ex-husband, Leland
23 Hull adopted him at two days old. (PSIR ¶ 131).
24

25 Mr. Hull has a great relationship with his oldest child, Riley Hull. (PSIR ¶135).
26 Mr. Hull does not have a relationship with his two youngest children after a divorce
27 from his ex-wife Gail Winters. (PSIR ¶ 135).
28

1 Mr. Hull worked for multiple manufacturing companies as a CNC machinist
2 while touring for the band named Sanctuary. (PSIR ¶154). Mr. Hull would travel to
3 perform in shows internationally on weekends and come back to work as a machinist
4 during the week.

5
6 Due to his mother being diagnosed with Stage 4 Renal Disease, Mr. Hull had to
7 quit Sanctuary and his job as a machinist to move back to Spokane to care for his
8 mother as her primary caretaker in 2015. (PSIR ¶155).

9
10 **To Promote Respect for the Law**

11 A sentence of 120- months imprisonment and 5 years of supervised release
12 promotes respect for the law. It will be the longest sentence Mr. Hull will serve. This
13 type of sentence will allow him the opportunity to enter programming in the bureau of
14 prisons and pursue the RDAP program. Additionally, Mr. Hull's time spent in custody
15 has helped him in his recovery from substance addiction.

16
17
18 Studies by the United States Sentencing Commission have shown that
19 recidivism rates among older prisoners is vastly reduced from younger prisoners. See
20 Attached Summary of Study. Mr. Hull will be more than 60 years old if sentenced to a
21 10-year term in prison. He recognizes that his addiction placed him in circumstances
22 that led to his convictions. He also recognizes that his health has benefited from the
23 time he has served in jail pending resolution of this case. The fact that Mr. Hull is in a
24 category of individuals less likely to commit a new offense after his release from prison
25 justifies the mandatory minimum term of imprisonment.

1 **Avoidance of unwarranted sentence disparities between similar**
2 **Defendants**

3 Mr. Hull’s co-defendant, Russel Clark, received two 108-month sentences that
4 ran concurrently. *See*, Case No.’s 2:20-CR-127-TOR and 2:20-CR-128-TOR (ECF No.
5 183). His 108-month sentence also ran concurrent with the unexpired term of
6 imprisonment in the Sanders County District Court, Thompson Falls, Montana case #
7 DC-19-38. *Id.* In Mr. Clark’s related indictment, his co-defendant, Mr. Williams,
8 received a 72-month sentence of imprisonment. *See*, Case No. 2:20-CR-127-TOR.
9
10

11 “Among the §3553(a) factors most relevant here are ‘the need to avoid
12 unwarranted sentence disparities among defendants with similar records who have
13 been found guilty of similar conduct’ and ‘the need for the sentence imposed... to
14 reflect the seriousness of the offense.’ 18 U.S.C. §3553(a)(2), (6).” *United States v.*
15 *Hendricks*, 307 F.Supp. 3d 1104 (Idaho Dist. 2018).
16

17 When reviewing the PSIR, the discovery, and the indictments in both case
18 numbers related to Mr. Clark, it is clear that both Mr. Williams and Mr. Clark were far
19 more involved in dealing drugs than Mr. Hull. Count 3 alleged in Mr. Hull’s
20 superseding indictment references a September 25, 2019, distribution that did not list
21 him. ECF 92. This further justifies imposition of the 10-year mandatory minimum
22 sentence.
23
24

25 In the response to the presentence report, Hull requests that the Court give
26 consideration to the fact that purity no longer signifies a person’s level of involvement
27 in the drug trafficking hierarchy. (ECF No. 300 at 16-22). The fact that most, if not
28

1 all, of the methamphetamine involves higher levels of purity than when the Guidelines
2 were first promulgated leads to unwarranted disparities in sentencing between lower-
3 level dealers and the higher-level dealers near the top of the hierarchy. The
4 methamphetamine guidelines were originally designed to take into account the levels
5 and hierarchy of drug traffickers. The same cannot be said now that most of the
6 methamphetamine sold at the street level are 90 percent or more pure. Thus, the
7 Court is justified in imposing a sentence at the 10-year mandatory minimum.

10 C. **Downward Departure or Variance**

11 When addressing a sentencing court's function in fashioning the appropriate
12 sentence, the Ninth Circuit, long ago, wrote:

14 In making a decision in any particular case, good judgment
15 will often require the evaluation of a complex set of factors.
16 No single factor may be enough to point to the wise course
17 of decision. But a wise person will not look on each
18 particular factor abstractly and alone. Rather, it will be how
the particular pieces fit together, converge, and influence
each other that will lead to the correct decision.

19 *United States v. Cook*, 938 F.2d 149, 153 (9th Cir. 1991).

20
21 *Cook* centered on a sentencing court's ability to grant downward departures
22 based on a "combination of factors" that constitute a single "mitigating factor." *Id.*
23 The sentencing landscape has changed since *Cook* with the Supreme Court's holding in
24 *United States v. Booker*, 543 U.S. 220 (2005) that eliminated the rigidity of the previous
25 mandatory guideline scheme.
26

27 Now a combination of factors may more reasonably justify downward variances
28

1 from the sentencing guidelines. *See, Gall v. United States*, 552 U.S. 38, 47 (2007) (“We
2 also reject the use of a rigid mathematical formula that uses the percentage of a
3 departure as the standard for determining the strength of the justifications required for
4 a specific sentence.”). In other words, “the totality of circumstances” are considered in
5 determining the “substantive reasonableness” of a particular sentence imposed outside
6 of the sentencing guideline range. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir.
7 2008) (citing *Gall*, ___U.S.___, 128 S.Ct. 586, 597 (2007). A sentence outside the
8 guideline range is not presumed unreasonable. *Id.*

9
10 In this case, a combination of factors justify a sentence well below the
11 sentencing guideline range. Mr. Hull requests that the Court depart downward or grant
12 a variance if necessary to impose a sentence of no more than 120-months
13 imprisonment.
14

15
16 Mr. Hull has been the primary caretaker of his mother, Lillie Hull. She is 85
17 years old and suffering from Stage 4 Renal-Disease. Mr. Hull has been her primary
18 caretaker since 2015 and he is Lillie Hull’s only child. *See*, (ECF No. 300 at 16).
19 Furthermore, the fact that Hull’s convictions demonstrate a lower street-level in the
20 drug trafficking hierarchy, a variance or departure is justified. *Id.* 16-22.
21

22 D. **Conclusion**

23
24 Based on the totality of information and circumstances, Mr. Hull respectfully
25 requests the Court to sentence him to 120-months imprisonment, 5 years of
26 supervised release, no fine, and a \$100 special penalty assessment.
27
28

1 Dated this 30th day of August 2022.

2 Respectfully Submitted,

3 s/ Zachary L. Ayers

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